Colorado Legislative Council Staff

SB16-044

FISCAL NOTE

FISCAL IMPACT: ☒ State ☐ Local ☐ Statutory Public Entity ☐ Conditional ☐ No Fiscal Impact

Drafting Number:	LLS 16-0665	**Date:**	February 5, 2016
Prime Sponsor(s):	Sen. Sonnenberg	**Bill Status:**	Senate Finance
		Fiscal Analyst:	Greg Sobetski (303-866-4105)

BILL TOPIC: CONTESTED CONSERVATION EASEMENT TAX CREDIT CLAIMS

Fiscal Impact Summary*	FY 2016-2017	FY 2017-2018	FY 2018-2019
State Revenue	**($117.6 million)**	**($2.5 million)**	**($3.3 million)**
Revenue Change			
General Fund	(117.6 million)	(2.5 million)	(3.3 million)
State Transfers			
General Fund	(129.7 million)		
Highway Users Tax Fund	103.8 million		
Capital Construction Fund	25.9 million		
State Expenditures	**$1,353,217**	**$100,979**	
General Fund	996,721	79,819	
Centrally Appropriated Costs	356,496	21,160	
TABOR Impact	($117.6 million)	($2.5 million)	not estimated
FTE Position Change	19.3 FTE	1.8 FTE	
Appropriation Required: $996,721 - Department of Revenue (FY 2016-17).			
Future Year Impacts: Ongoing state revenue decrease.			

**Parentheses indicate a decrease in funds.*

Summary of Legislation

The bill states that the only allowable reason for the Department of Revenue (department) to contest a conservation easement tax credit claim is if the appraised value is supported solely by an appraiser convicted of a crime in connection with the preparation of an appraisal. The change applies both to conservation easements donated prior to January 1, 2014, and to conservation easements donated on or after the bill is signed into law. Additionally, the bill directs the department to refund the amount of tax, interest, or penalty paid by a taxpayer in connection with a claim previously contested for any reason other than that stated in the bill.

Background

The department has contested conservation easement income tax credits claimed by taxpayers for tax years 2000 through 2013. The majority of cases have been settled, with taxpayers agreeing to pay most of the tax for which a credit was claimed in exchange for reductions in penalties and interest assessed. As of January 20, 2016, settlements had been reached for 628 donations, with taxpayers agreeing to pay $112.9 million and the department agreeing to waive $88.3 million in taxes, interest, and penalties. Disputes are ongoing in 87 cases, involving $33.3 million in taxes, interest, and penalties.

State Revenue

The bill is expected to reduce state General Fund revenue by **$117.6 million in FY 2016-17, $2.5 million in FY 2017-18, $3.3 million in FY 2018-19**, and by decreasing amounts in subsequent fiscal years.

Settled cases. The bill requires the department to refund the amount of tax, interest, or penalty paid in connection with any claim previously contested, except if an appraiser was convicted of a crime in connection with preparation of the appraisal. It is assumed that the bill requires a refund for any previously contested case in which the department and the taxpayer reached a settlement.

This provision is expected to reduce state General Fund revenue by $116.2 million during FY 2016-17. This amount includes refunds of $112.9 million in tax, interest, and penalty paid by taxpayers in 628 prior settlements, and refunds of $3.3 million in tax, interest, and penalty to be paid by taxpayers in 15 settlements assumed to be reached in active cases prior to the bill's effective date. To the extent that the terms of these settlements include payment plans that are ongoing as of the bill's effective date, a portion of the revenue reduction estimated in this section will occur later than anticipated.

Active cases. The bill requires the department to cease to contest any active conservation easement cases from the bill's effective date. This provision is expected to reduce state General Fund revenue by $1.4 million in FY 2016-17, $2.5 million in FY 2017-18, $3.3 million in FY 2018-19, and by similar amounts in subsequent years.

It is assumed that 15 of the 87 currently active cases will be settled prior to the bill becoming law. It is further assumed that the remaining 72 cases will be resolved between 2016 and 2020 under current law, with taxpayers agreeing to pay tax, interest, and penalties to an extent consistent with past settlements. Based on the amount of outstanding tax, interest, and penalty stated as due by the department, it is assumed that each donor who settles with the department under current law will agree to pay approximately $215,000 in tax, $1,500 in interest, and $1,000 in penalty.

Taxpayers may agree to pay the settled amount immediately or over a period of years. For the purposes of this fiscal note, it is assumed that all settlements will result in installment agreements for four payments over four years, identical except for the accrual of additional interest.

TABOR Impact

The bill reduces state revenue from individual income taxes, which will reduce the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. Since the bill reduces both revenue to the General Fund and the refund obligation by equal amounts, there is no net impact on the amount of money available for General Fund expenditures. However, the bill will reduce money available for the General Fund budget in the future during years the state does not collect money above the TABOR limit.

State Transfers

SB 09-228 transfers. Senate Bill 09-228 requires transfers to the Highway Users Tax Fund and the Capital Construction Fund to occur each year through FY 2019-20. When the TABOR surplus is between 1.0 percent and 3.0 percent of General Fund revenue, the transfers are halved; when the TABOR surplus exceeds 3.0 percent the transfers are suspended. This bill will reduce the TABOR surplus in FY 2016-17 to below 1.0 percent of General Fund revenue, which will increase the amount of money transferred to the Highway Users Tax Fund by $103.8 million and to the Capital Construction Fund by $25.9 million in FY 2016-17.

State Expenditures

The bill increases state General Fund expenditures by up to **$1,353,217 and 19.3 FTE in FY 2016-17 and $100,979 and 1.8 FTE in FY 2017-18.** Expenditures are summarized in Table 1 and detailed below.

Table 1. Expenditures Under SB16-044

Cost Components	FY 2016-17	FY 2017-18
Personal Services	878,008	$79,818
FTE	19.3 FTE	1.8 FTE
Operating Expenses and Capital Outlay Costs	118,713	
Centrally Appropriated Costs*	356,496	21,160
TOTAL	**$1,353,217**	**$100,979**

** Centrally appropriated costs are not included in the bill's appropriation.*

Department of Revenue. The expenditures shown in Table 1 represent a one-time department expenditure over two fiscal years for the addition of personnel to process returns and administer refunds as required in the bill.

The bill is expected to impact 715 donations, including 643 settled cases and 72 active cases. Based on the historical rate at which donors transfer portions of their credits to other taxpayers, the bill is expected to impact 3,790 taxpayers, including 715 donors and 3,075 transferees. The bill is expected to require changes in the department's administration of 13,265 individual income tax returns, assuming that the average taxpayer is able to carry forward a conservation easement credit for 3.5 years. Over two fiscal years, processing of returns will require 11.4 FTE at the Tax Examiner I level, and issuance of refunds will require 9.6 FTE at the Tax Examiner II level.

Judicial Department. Workload for trial courts in the Judicial Department will decrease to the extent that Department of Revenue final interpretations in active cases will be appealed to district court under current law. The reduction in workload is expected to represent a small number of cases per year and does not require a change in appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under SB16-044

Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$167,962	$14,008
Supplemental Employee Retirement Payments	75,134	7,152
Leased Space	113,400	0
TOTAL	**$356,496**	**$21,160**

Effective Date

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2016-17, the bill requires an allocation of 19.3 FTE and a General Fund appropriation of $996,721 to the Department of Revenue.

State and Local Government Contacts

Higher Education	Information Technology	Judicial
Law	Regulatory Agencies	Revenue

Research Note Available

An LCS Research Note for SB16-044 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.